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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,017	04/20/2005	Gunter Fuhr	B1180/20035	5994

3000 7590 03/23/2009

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
11TH FLOOR, SEVEN PENN CENTER
1635 MARKET STREET
PHILADELPHIA, PA 19103-2212

EXAMINER	
ALI, MOHAMMAD M	
ART UNIT	**PAPER NUMBER**
3744	

NOTIFICATION DATE	DELIVERY MODE
03/23/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@crbcp.com

Office Action Summary	Application No.	Applicant(s)	
	10/532,017	FUHR ET AL.	
	Examiner	Art Unit	
	MOHAMMAD M. ALI	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-8, 10, 12-13, 15-15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Smollett et al., (3,292,424). Smollett et al., disclose a cry storage device 22, and at least one data storage device 69 (The examiner considering relay as a data store device to store data when to operate the relay), and at least one sample receptacle device 77 with at least one sample chamber (the duct portion dipped in the oil sample 72) for the uptake of suspension sample, the at least one sample chamber 82 being connected to at least one data storage device 69 through fluid contained in the fluid chamber 15 and having elongated hollow shaped that extends from an inlet end located neat the bottom 80 of the container 70 over a predetermined length to an outlet end having a wider diameter 99, wherein one sample chamber 82 is attached to the at least one data storage device 69 in a flexible (the conduit 82 being coiled is flexible and data storage device 69 is connected to 82 through fluid by a flexible electric cable 68 and movably and hanging manner. For claim 16 for mechanical separation see Fig.2 where conduit 84 has been mechanically separated from its continuity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 9 and 17- 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smollett.

Regarding claim 6 for multiplicity of data store is an obvious duplication of single data storage.

Regarding labeling for claim 9 is a known feature in the art would be obvious implementation with Smollett et al.

Regarding claim 17 for sealing sample is also a known feature in the art and would be an obvious implementation wit Smollett et al.

Regarding claim 18, Smollett et al., disclose to reduce up to 25 degree F as shown in column 2 of table of a test result. However, Smollett et al., do not disclose a reduced temperature less than 100 degree C. It is known that a cryogenic apparatus is able to reduce temperature of an environment less than -100 degree C. Therefore, it would be an obvious choice of an ordinary skill to choose a reduced temperature of less than -100 degree temperature. It is also mentioned that creation of cryogenic temperature below 100 degree C is well known in the art. For evidentiary reference, see US Patent 4,739,622 to Smith, column 6, line 53.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smollett et al., in view of Takiue (20020007256 A1). Smollett et al., disclose the invention substantially as claimed as stated above except measured data and reference data. Takiue teaches the use of a measured- data process center 32 comprises a data-storage 33, an analyzer 34. The data-storage 33 stores previously reference data in order to analyze the measured data. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device and method of Smollett et al., in view of Takiue such that a data-storage capable of storing measured-data and reference data and analyze the measured-data with reference-data in order to obtain a desired analysis of the data.

Response to Arguments

Applicant's arguments filed 08/13/08 have been fully considered but they are not persuasive. The Applicant argued that Smollett does not disclose a cry storage device comprising at least one data storage device including at least one data storage adapted to store a plurality of data under cryo conditions. The examiner disagrees. First the claims do not disclose such disclosure and though no claims disclose such element,

Smollett et al., disclose a cryo storage device 22 and one data storage device 69. The examiner considers that Smollett et al's data storage stores plurality of data because it works on plurality of switches 66 and 63. The applicant further argued that the components are not adapted for storing the sample under cryogenic conditions, for example, at very low temperature under -50 degree C. The examiner again disagrees. No claim under 102 rejections discloses such element. Therefore, the argument is not valid for the 102 rejections. The container is sufficiently insulated to undergo a test requiring - 25 degree F which is equivalent to -30 degree C. As may seen in the Table in column 6. Therefore, it is obvious that the container is sufficiently insulated that it could withstand at any less temperature including – 50 degree C. Therefore, the argument is not correct. Therefore, the rejections are ok.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD M. ALI whose telephone number is (571)272-4806. The examiner can normally be reached on maxiflex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4808. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohammad M Ali/
Primary Examiner, Art Unit 3744